

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2000-298-C - ORDER NO. 2000-834
OCTOBER 13, 2000

IN RE: Application of PurePacket Communications)	ORDER
of the South, Incorporated for a Certificate of)	GRANTING
Public Convenience and Necessity to Provide)	CERTIFICATE
Intrastate Local Exchange and Interexchange)	
Telecommunications Services, and for)	
Alternative Regulation and Flexible)	
Regulation.)	

This matter comes before the Public Service Commission of South Carolina (the “Commission”) by way of the Application of PurePacket Communications of the South, Inc. (“PurePacket” or the “Company”) for authority to provide intrastate local exchange and interexchange telecommunications services within the State of South Carolina. The Company requests that the Commission regulate its local telecommunications services in accordance with the principles and procedures established for flexible regulation in Order No. 98-165 in Docket No. 97-467-C. In addition, the Company requests that the Commission regulate its business services offerings identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. The Application was filed pursuant to Chapter 9 of Title 58 of the South Carolina Code Annotated, and the Rules and Regulations of the Commission.

By letter, the Commission’s Executive Director instructed the Company to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the manner

and time in which to file the appropriate pleadings for participation in the proceedings. The Company complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. A Petition to Intervene was received from the South Carolina Telephone Coalition ("SCTC") on August 16, 2000.

On September 18, 2000, counsel for SCTC filed with the Commission a Stipulation in which the Company stipulated that it would seek authority in non-rural local exchange ("LEC") service areas of South Carolina and that it would not provide any local service to any customer located in a rural incumbent's service area, unless and until PurePacket provided written notice of its intent prior to the date of the intended service. The Company also stipulated that it was not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas. PurePacket agreed to abide by all State and Federal laws and to participate to the extent that it may be required to do so by the Commission in support of universally available telephone service at affordable rates. The SCTC withdrew its opposition to the granting of a statewide Certificate of Public Convenience and Necessity to the Company provided the conditions contained in the Stipulation are met. The Stipulation is approved and attached as Order Exhibit 1.

A hearing was commenced on September 20, 2000, at 11:30 a.m. in the Commission's Hearing Room. The Honorable William Saunders, Chairman, presided. PurePacket Communications of the South, Inc. was represented by Weston Adams, III, Esquire. Adelaide D. Kline, Staff Counsel, represented the Commission Staff.

Mark Brown, Vice President, Regulatory and General Counsel, of PurePacket Communications of the South, Inc., appeared and testified in support of the Application.

According to the record, Mr. Brown has over ten years in a variety of legal positions in the telecommunications industry. He most recently served as Director of Legal and Regulatory Affairs with MediaOne in Atlanta, Georgia. Prior to his experience at MediaOne, he was chief attorney for telecommunications matters for two companies in California. In the early 1990s he represented telecommunications companies before the California Public Utilities Commission and the Arizona Corporation Commission.

PurePacket is a newly-created, privately-held Delaware corporation and wholly-owned subsidiary of PurePacket Corporation, also a start-up company. PurePacket was organized under the laws of the State of Delaware on February 9, 2000. The Company requests authority to provide all forms of intrastate, long distance and local exchange telecommunications services within the State of South Carolina. Furthermore, PurePacket requests that the Commission regulate its business services, consumer card, and operator service offerings in accordance with the principles and procedures established by Orders No. 95-1734 and 96-55 in Docket No. 1995-661-C. In addition, the Company requests that the Commission allow PurePacket to adopt the flexible rate structure for its local exchange service offerings similar to that approved by Order No. 1998-165 in Docket No. 1997-467-C. In addition, PurePacket requests that the Commission waive application of 26 S.C. Code Ann. Regs. 103-610 and 103-631 (1976).

Upon receiving certification from this Commission, the Company proposes to offer facilities-based and resold local and long distance services, including high speed data and voice telecommunications services primarily to small and mid-sized business customers throughout the State of South Carolina. Mr. Brown testified that PurePacket will target small to mid-sized business customers who have between fifteen and five hundred lines through a small sales force

in South Carolina, as well as through some direct sales and telemarketing. He said the Company is aware of the Commission's marketing guidelines. Mr. Brown offered that the Company does not plan to offer long distance service to residential customers. Mr. Brown further stated that the Company intends to provide digital connections at a variety of speeds between customer-designated premises and the Company's network. PurePacket's services may be provided using a variety of digital transmission technologies, using its own services and equipment and/or the facilities of others. PurePacket intends to purchase unbundled network elements, including copper loops, and to collocate equipment either in other carriers' central offices or its own locations. Currently, PurePacket does not own, operate or control, directly or indirectly, transmission facilities with the State of South Carolina. The record reveals PurePacket intends to offer resold local services which are competitive with and comparable to local services offered by the incumbent LECs. The Company does not propose to offer alternative operator services to the transient public. PurePacket has received certification in the states of Connecticut, Florida, Georgia, Massachusetts, North Carolina, New York, Pennsylvania, Rhode Island, Tennessee, and Virginia. Mr. Brown offered that PurePacket expects to start providing services in the states of Georgia, Florida and Tennessee in November, 2000. He said facilities are in place in those three states, and at the time of the hearing, he said the Company was finalizing collocation agreements with BellSouth.

Mr. Brown testified as to the Company's technical, managerial, and financial ability to provide telecommunications services in South Carolina. Regarding the Company's financial ability to offer its services in South Carolina, the testimony reveals PurePacket possesses the necessary financial qualifications to provide the services for which it seeks authority. The

Company's financial statements were submitted with PurePacket's Application to demonstrate its financial resources. The record reveals that as a start-up company, PurePacket is in the process of finalizing some series B financing. Mr. Brown testified that since the Company submitted its Application for certification in South Carolina, it has arranged to close on a Series B round of financing which should take place within the next sixty days. He said the Company anticipates raising an additional \$60M in available resources. He said the Company has secured a \$35M line of credit for equipment purchases from Cisco Systems, one of its major suppliers. He explained that the Company did show a \$617,969.14 net loss on a two month period ending December 31, 1999. He said that that financial situation is due to the fact that the Company is in the development stage with overhead expenses customarily related to a start-up business. The Company is not yet offering services in any state. Mr. Brown stated that PurePacket will only utilize underlying carriers properly certified by the South Carolina Public Service Commission. He further stated that the final determination of the Company's underlying carrier had not been made at the time of the hearing. He said that the Company had entered into a nine state interconnection agreement with BellSouth for local services in the Southeast. Mr. Brown testified that Gregory Kraigher, PurePacket's Chief Financial Officer, will serve as the financial and regulatory contact person.

The record reveals that when the company begins offering services within the State of South Carolina, customers having inquiries or complaints will be able to reach PurePacket twenty-four hours a day, seven days a week for customer service by dialing 866-288-2521, a toll free number. Mr. Brown testified that PurePacket's South Carolina customers can expect to have repairs made immediately. The record further reveals that PurePacket will follow through with

the customer and any underlying carriers until a problem is resolved. Mr. Brown said that the Company's name, address and toll free telephone number will be included on each customer's monthly bill. The record reveals that PurePacket's billing will be performed by a third-party contract billing firm. He stated that billing questions should be directed to Richard Mooney, Director of Billing at (678) 566-1146 in the Company's Alpharetta, Georgia, office. He said the Company also expects to have interaction with its customers through its significant website presence.

According to Mr. Brown, PurePacket's key managerial staff remains the same as listed in the original Application, and has extensive management and telecommunications experience. He stated that the key management team has over one hundred years of cumulative experience in the telecommunications industry. Mr. Brown testified that the Company was founded by Thomas Buttermore, its Chief Executive Officer and President. Prior to founding PurePacket Communications, Inc., Mr. Buttermore was the Executive Director of High Speed Data for MediaOne in Atlanta, Georgia, from May, 1997, until November, 1999. Prior to joining Media One, Mr. Buttermore was a Director at BellSouth Interactive Media Services and BellSouth.net. He received a Masters of Business Administration from Georgia State University in 1998.

Mr. Brown stated that Richard Batelaan is PurePacket's Vice President of Operations, responsible for operations and customer care. Prior to joining PurePacket in December, 1999, Mr. Batelaan was Vice President of Operations at BellSouth.net where he was responsible for approximately five hundred and fifty employees. The record reveals that Mo Nikain is Vice President of Software Development and currently serves as PurePacket's Chief Information Officer. Ed Pimentel is the Company's Chief Technology Officer, responsible for the design and

deployment of its advanced data and voice network, including the network operations center.

Gregory Kraigher is the Company's Chief Financial Officer, and is responsible for all accounting, including planning, and financial analysis and reporting. In addition, Mr. Brown stated that Ron Johnson is PurePacket's Vice President of Sales. He said that Mr. Johnson also came to PurePacket from MediaOne in Atlanta, Georgia.

As to the Company's marketing plans, Mr. Brown testified the Company will initially use a direct sales approach. He said PurePacket will not engage in radio or television advertising in South Carolina prior to March, 2001. Mr. Brown testified his Company uses third party verification to ensure no slamming occurs with its customers.

In addition, the Company requested that the Commission waive application of 26 S.C. Code Ann. Regs. 103-610 and 103-631 (1976 and Supp. 1999). More specifically, PurePacket requests permission for its records required by the Public Service Commission rules or necessary for the administration thereof, to be physically kept in Alpharetta, Georgia. In addition, the Company seeks to contract with the appropriate incumbent local exchange carrier (ILEC) for the ILEC to provide PurePacket with directory listings as well as to undertake the distribution of directories.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. PurePacket is organized as a corporation under the laws of the State of Delaware and is authorized to do business as a foreign corporation in the State of South Carolina by the Secretary of State.

2. PurePacket is a provider of local exchange and interexchange telecommunications services and wishes to provide its services in South Carolina.

3. PurePacket has the managerial, technical, and financial resources to provide the services as described in its Application.

4. The Commission finds that PurePacket's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. Section 58-9-280 (B)(3) (Supp. 1999).

5. The Commission finds that PurePacket will support universally available telephone service at affordable rates.

6. The Commission finds that PurePacket will provide services which will meet the service standards of the Commission.

7. The Commission finds that the provision of local exchange service by PurePacket "does not otherwise adversely impact the public interest." S.C. Code Ann. Section 58-9-280 (B)(5) (Supp. 1999).

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to PurePacket to provide competitive intrastate non-rural local exchange service in South Carolina. The terms of the Stipulation

between PurePacket and SCTC are approved, and adopted as a part of this Order. Any proposal to provide such service to rural service areas is subject to the terms of the Stipulation. In addition, PurePacket is granted authority to provide intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through its own facilities and through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), directory assistance, travel card service or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. PurePacket shall file, prior to offering local exchange services in South Carolina, its final tariff of its local service offerings conforming to all matters discussed with Staff and comporting with South Carolina law in all matters. PurePacket's local telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C. Specifically, the Commission adopts for PurePacket's competitive intrastate local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels that will have been previously approved by the Commission. Further, PurePacket's local exchange service tariff filings are presumed valid upon filing, subject to the Commission's right within thirty (30) days to institute an investigation of the tariff filing, in which case the tariff filing would be suspended pending further Order of the Commission. Further, any such tariff filings will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

3. The Commission adopts a rate design for the long distance services of PurePacket which are consistent with the principles and procedures established for alternative regulation of business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C.

Under the Commission approved alternative regulation, the business service offerings of PurePacket including consumer card services, and operator services, are subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to PurePacket also.

4. With regard to the residential interexchange service offerings of PurePacket, the Commission adopts a rate design which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

5. PurePacket shall not adjust its residential interexchange rates below the approved maximum level without notice to the Commission and to the public. PurePacket shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in

instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential interexchange services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 1999).

6. If it has not already done so by the date of issuance of this Order, PurePacket shall file its revised maximum long distance tariff and an accompanying price list within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

7. PurePacket is subject to access charges pursuant to Commission Order No. 86-584 in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

8. With regard to the Company's resale interexchange service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

9. PurePacket shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If PurePacket changes underlying carriers, it shall notify the Commission in writing.

10. With regard to the origination and termination of toll calls within the same LATA, PurePacket shall comply with the terms of Order No. 93-462, Order Approving Stipulation and

Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the Federal Communications Commission, pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209).

11. PurePacket shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The annual report and the gross receipt filings will necessitate the filing of intrastate information. Therefore, PurePacket shall keep such financial records on an intrastate basis as needed to comply with the annual report and gross receipt filings. The form the Company shall use to file annual financial information with the Commission can be found at the Commission's website at www.psc.state.sc.us/forms. The two page form the Company shall use to file this information is entitled "Annual information on South Carolina Operations for Interexchange Companies and AOS". Be advised that the Commission's annual report for telecommunications companies requires the filing of intrastate revenues and intrastate expenses.

12. In addition, PurePacket is required to file annual report information for competitive local exchange carriers. The form the Company shall use to file annual financial information with the Commission can be found at the Commission's website at www.psc.state.sc.us/forms. This form is entitled "Annual Report for Competitive Local Exchange Carriers" and consists of four pages.

13. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the

Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours.

PurePacket shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The form the Company shall use to file this authorized utility representative information can be found at the Commission's website at www.psc.state.sc.us/forms. This form is entitled "Authorized Utility Representative Information." Further, the Company shall promptly notify the Commission in writing if the representatives are replaced.

14. PurePacket shall conduct its business in compliance with Commission decisions and Orders, both past and future, including but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

15. By its Application, PurePacket Office requested a waiver of 26 S.C. Code Ann. Regs. 103-610 and 103-631 (1976 and Supp. 1999). The Company requests a waiver of 26 S.C. Code Ann. Regs. 103-610 (1976) so it may maintain its records required by the Public Service Commission rules or necessary for the administration thereof, to be kept in Alpharetta, Georgia. The Company also requests a waiver 26 S.C. Code Ann. Regs. 103-631 (Supp. 1999) so that the Company may contract with the ILECs to provide its customers with directory listings as well as to undertake the distribution of directories. We grant a waiver of the application of 26 S.C. Code Ann. Regs. 103-610 and 103-631 (1976 and Supp. 1999) to the Company. However, PurePacket is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

16. Title 23, Chapter 47, South Carolina Code of Laws Ann., governs the establishment and implementation of a "Public Safety Communications Center," which is more commonly known as a "911 system" or "911 service." Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs PurePacket to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be operating. Contact with the appropriate authorities is to be made before beginning telephone service in South Carolina. Accompanying this Order is an information packet from the South Carolina Chapter of the National Emergency Number Association ("SC NENA") with contact information and sample forms. The Company may also obtain information by contacting the E911 Coordinator at the Office of Information Resources of the South Carolina Budget and Control Board. By this Order and prior to providing services within South Carolina, PurePacket shall contact the 911 Coordinator in each county, as well as the 911 Coordinator in each city where the city has its own 911 system, and shall provide information regarding the Company's operations as required by the 911 system.

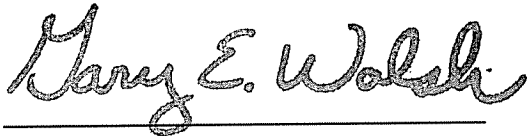
17. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Chairman

ATTEST:



Executive Director

(SEAL)

BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA

filed 9/18/00
accepted 9/19/00

Docket No. 2000-0298-C

Re: Application of PurePacket Communications of the)
South, Inc. for a Certificate of Public Convenience)
and Necessity to Provide Local Exchange and Long)
Distance Telecommunications Services in the State of)
South Carolina)

STIPULATION

The South Carolina Telephone Coalition ("SCTC") (see attachment "A" for list of companies) and PurePacket Communications of the South, Inc. ("PurePacket") hereby enter into the following stipulations. As a consequence of these stipulations and conditions, SCTC does not oppose PurePacket's Application. SCTC and PurePacket stipulate and agree as follows:

1. SCTC does not oppose the granting of a statewide Certificate of Public Convenience and Necessity to PurePacket, provided the South Carolina Public Service Commission ("Commission") makes the necessary findings to justify granting of such a certificate, and provided the conditions contained within this stipulation are met.

2. PurePacket stipulates and agrees that any Certificate which may be granted will authorize PurePacket to provide service only to customers located in non-rural local exchange company ("LEC") service areas of South Carolina, except as provided herein.

3. PurePacket stipulates that it is not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas.

4. PurePacket stipulates and agrees that it will not provide any local service, by its own facilities or otherwise, to any customer located in a rural incumbent LEC's service area, unless and

until PurePacket provides such rural incumbent LEC and the Commission with written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. Also, PurePacket acknowledges that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause.

5. PurePacket stipulates and agrees that, if PurePacket gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, and either (a) the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law within such 30-day period, or (b) the Commission institutes a proceeding of its own, then PurePacket will not provide service to any customer located within the service area in question without prior and further Commission approval.

6. PurePacket acknowledges that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any future policies, procedures, and guidelines relevant to such proposed service which the Commission may implement, so long as such policies, procedures, and guidelines do not conflict with Federal or State law.

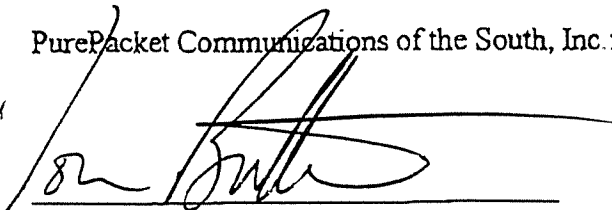
7. The parties stipulate and agree that all rights under Federal and State law are reserved to the rural incumbent LECs and PurePacket, and this Stipulation in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled.

8. PurePacket agrees to abide by all State and Federal laws and to participate, to the extent it may be required to do so by the Commission, in the support of universally available telephone service at affordable rates.

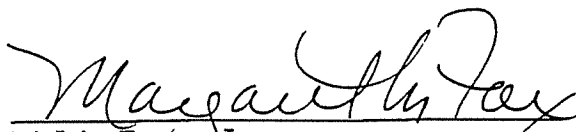
9. PurePacket hereby amends its application and its prefiled testimony in this docket to the extent necessary to conform with this Stipulation.

AGREED AND STIPULATED to this 11TH day of SEPTEMBER, 2000.

PurePacket Communications of the South, Inc.:


THOMAS BUTTERMAIER, CEO

South Carolina Telephone Coalition:


M. John Bowen, Jr.
Margaret M. Fox
McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

Attorneys for the South Carolina Telephone
Coalition

ATTACHMENT A

South Carolina Telephone Coalition Member Companies for Purposes of Local Service Stipulation

ALLTEL South Carolina, Inc.
Chesnee Telephone Company
Chester Telephone Company
Farmers Telephone Cooperative, Inc.
Ft. Mill Telephone Company
Heath Springs Telephone Company Inc.
Home Telephone Company, Inc.
Lancaster Telephone Company
Lockhart Telephone Company
McClellanville Telephone Company
Norway Telephone Company
Palmetto Rural Telephone Cooperative, Inc.
Piedmont Rural Telephone Cooperative, Inc.
Pond Branch Telephone Company
Ridgeway Telephone Company
Rock Hill Telephone Company
Sandhill Telephone Cooperative, Inc.
St. Stephen Telephone Company
West Carolina Rural Telephone Cooperative, Inc.
Williston Telephone Company

BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA

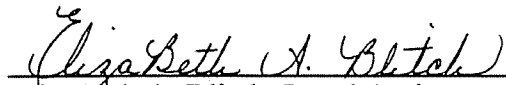
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and Necessity to Provide Local Exchange and Long)
Distance Telecommunications Services in the State of)
South Carolina)

**CERTIFICATE OF
SERVICE**

I, ElizaBeth A. Blitch, do hereby certify that I have this date served one (1) copy of the foregoing Stipulation upon the following party of record by causing said copy to be deposited with the United States Mail, first class postage prepaid to:

Weston Adams, III, Esquire
Weston Adams Law Firm
Post Office Box 291
Columbia, South Carolina 29202.


ElizaBeth A. Blitch, Legal Assistant
McNAIR LAW FIRM, P.A.
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September 18, 2000

Columbia, South Carolina